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Attorneys for Microsoft Corporation

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re
DELPHI CORPORATION, et al.
Debtors.

Chapter 11
Case No. 05-44481 (RDD)
Jointly Administered

CURE CLAIM OF MICROSOFT

COME NOW Microsoft Corporation, a Washington corporation, and its wholly-owned subsidiary Microsoft Licensing, GP (collectively "Microsoft"), and hereby make their Cure Claim as follows:

1. Microsoft and Delphi Automotive Systems LLC ("Debtor") are parties to the following:

| <u>Item</u> | <u>Number</u> |
|--------------------------------|---------------|
| Microsoft Business Agreement | U2985619 |
| Microsoft Enterprise Agreement | 01E62067 |
| Microsoft Enrollment Agreement | 2813189 |
| Microsoft Enrollment Agreement | 5635919 |

These agreements are referred to herein collectively as the "Enterprise Agreement" or the "EA". The EA is the contractual vehicle by which the Debtor obtained Microsoft

software licenses in volume. These agreements are not the licenses themselves, but rather the agreements by which the Debtor applied for and obtained licenses in volume quantities.

2. The Cure Claim of Microsoft for the EA was set forth in Microsoft's Proof of Claim, dated July 28, 2006, filed on July 31, 2006, under Delphi Claim Number 13452. A true and complete copy of the Proof of Claim is attached as Exhibit A.

3. As reported in the Proof of Claim, the cure amount is \$3,005,830.42.

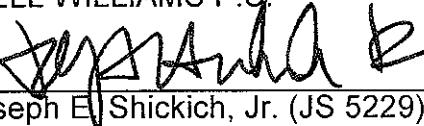
4. Debtors do not "own" the Microsoft licensed products and software obtained via the EA. Rather, the products and software are copyrighted materials that Debtors have licensed from Microsoft.

5. The licenses that Debtors have of Microsoft software products are licenses of copyrighted materials and, therefore, may not be assumed or assigned without Microsoft's consent. In re Catapult Entertainment, 165 F.3d 747 (9th Cir. 1999) (since federal patent law excused non-debtor licensor from rendering performance, debtor could not assume or assign the non-exclusive patent license without the non-debtor's licensor's consent). The analysis of the court in In re Catapult holds true for non-exclusive copyright licenses. See In re Access Beyond Technologies, Inc., 237 B.R. 32, 48 49 (Bankr. D. Del. 1999) (citing In re West Elec., Inc., 852 F.2d 79 (3d Cir. 1988)); In re Patient Educ. Media, 210 B.R. 237, 243 (Bankr. S.D.N.Y. 1997) (holding that debtor could not assume and assign nonexclusive license without copyright owner's consent).

6. WHEREFORE, Microsoft states that cure of \$3,005,830.42 is due for the EA, that the underlying licenses cannot be assumed and assigned without Microsoft's consent, and that it reserves the right to amend this Cure Objection.

DATED this 25th day of March, 2008.

RIDDELL WILLIAMS P.S.

By: 

Joseph E. Shickich, Jr. (JS 5229)

Washington State Bar No. 8751

Riddell Williams P.S.

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Counsel for Microsoft Corporation

DECLARATION OF SERVICE

Sheila Rowden declares:

1. I am an employee of Riddell Williams P.S. which represents Microsoft Corporation and Microsoft Licensing, GP. I am a United States citizen, over the age of 18, competent to make this Declaration, and have personal knowledge of the facts herein.

2. On Tuesday, March 25, 2008, I electronically filed via the U.S. Bankruptcy Court's CM/ECF System the foregoing pleading:

- Cure Claim of Microsoft.

It is my understanding that at the time of filing this document on the ECF System, the Court will automatically send electronic notification to each of the individuals and/or entities (that are ECF participants) who appeared and/or requested special notice in this case.

3. On Tuesday, March 25, 2008, I also caused to be served via Federal Express overnight delivery a copy of this same pleading on:

To the Debtors:

Delphi Corporation
5725 Delphi Drive
Troy, MI 48098
Attn: David M. Sherbin
General Counsel

with a copy to:

Skadden, Arps, Slate, Meagher &
Flom LLP
333 West Wacker Drive, Suite 2100
Chicago, IL 60606
Attn: John Wm. Butler, Jr.
George N. Panagakis
Ron E. Meisler

and a copy to:

Skadden, Arps, Slate, Meagher &
Flom LLP
Four Times Square
New York, NY 10036
Attn: Kayalyn A. Marafioti
Thomas J. Matz

To the Plan Investors:

A-D Acquisition Holdings, LLC
c/o Appaloosa Management L.P.
26 Main Street
Chatham, NJ 07920
Attn: James E. Bolin

with a copy to:

White & Case LLP
Wachovia Financial Center
200 South Biscayne Blvd., Suite 4900
Miami, FL 33131-2352
Attn: Thomas E. Lauria
Michael C. Shepherd

and a copy to:

White & Case LLP
1155 Avenue of the Americas
New York, NY 10036-2787
Attn: Gerard H. Uzzi
Glenn M. Kurtz
Douglas P. Baumstein

To the Creditors' Committee:

Latham & Watkins LLP
885 Third Avenue, Suite 1000
New York, NY 10022-4834
Attn: Robert J. Rosenberg
 Mitchell A. Seider
 Mark A. Broude

To the Equity Committee:

Fried, Frank, Harris, Shriver &
 Jacobson LLP
One Yew York Plaza
New York, NY 10004
Attn: Brad E. Scheler
 Vivek Milwani
 Bonnie K. Steingart

To GM:

Weil, Gotschal & Manges LLP
767 Fifth Avenue
New York, NY 10153
Attn: Jeffrey L. Tanenbaum
 Michael P. Kessler
 Robert J. Lemons

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

EXECUTED this 25th day of March, 2008.



Sheila Rowden
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Form B10 (Official Form 10) (10/05)

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

Exhibit A

In re Delphi Automotive Systems LLC
U.S. Bankruptcy Court (SD NY - Manhattan) Case No. 05-44640
Proof of Claim (Continued)

The claimants are Microsoft Corporation and Microsoft Licensing, GP (collectively, "Microsoft"). Delphi Automotive Systems LLC ("Debtor") and Microsoft Licensing, GP, are parties to the following:

| Item | Number |
|--------------------------------|----------|
| Microsoft Business Agreement | U2985619 |
| Microsoft Enterprise Agreement | 01E62067 |
| Microsoft Enrollment Number | 2813189 |

These agreements are referred to herein collectively as the "Enrollment Agreement" or the "EA". The EA is the contractual vehicle by which the Debtor obtained Microsoft software licenses in volume. It is not the licenses themselves, but rather the agreement by which the Debtor applied for and obtained licenses in volume quantities. As of the date of this proof of claim, the Debtor has neither assumed nor rejected the EA. Accordingly, Microsoft files this proof of claim contingently in case the Debtor rejects and does not assume the EA.

The prepetition amounts currently unpaid and due total \$3,005,830.42:

| Billing Document | Amount |
|------------------|----------------|
| 9750793883 | \$165.00 |
| 9750796033 | \$228.00 |
| 9653619496 | \$2,667,657.22 |
| 9653899671 | \$337,780.20 |
| | \$3,005,830.42 |

Attached hereto is a copy of page 7250 from Schedule G for the Debtor. It shows the Debtor has listed the EA as one of the Debtor's executory contracts. Also attached is an email from Mark Volpp of the Debtor, dated February 13, 2006, in which the Debtor calculates that the prepetition amount due under the EA is \$3,343,217.62. Microsoft reserves the right to amend this proof of claim, especially if the Debtor rejects the EA and does not assume. Microsoft presumes that the Debtor has a copy of the EA, but will provide one upon request.

In re: DELPHI AUTOMOTIVE SYSTEMS LLC Debtor, Case No. 05-44640 Entity #39

SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES

| NAME AND MAILING ADDRESS, INCLUDING ZIP CODE, OF OTHER PARTIES TO LEASE OR CONTRACT | DESCRIPTION OF CONTRACT OR LEASE AND NATURE OF DEBTOR'S INTEREST. STATE WHETHER LEASE IS FOR NONRESIDENTIAL REAL PROPERTY. STATE CONTRACT NUMBER OF ANY GOVERNMENT CONTRACT. |
|--|--|
| 1549418 - 10177298 MICROSEMI CORP 2529 COMMERCE DR STE E KOKOMO IN 46902 | Type of Contract: PURCHASE CONTRACTS/ PURCHASE ORDERS Number: 550064730 Effective Date: 12/18/2004 Term: 12/31/2005 |
| 1549418 - 10177299 MICROSEMI CORP 2529 COMMERCE DR STE E KOKOMO IN 46902 | Type of Contract: PURCHASE CONTRACTS/ PURCHASE ORDERS Number: 550064731 Effective Date: 12/18/2004 Term: 12/31/2005 |
| 1549418 - 10177300 MICROSEMI CORP 2529 COMMERCE DR STE E KOKOMO IN 46902 | Type of Contract: PURCHASE CONTRACTS/ PURCHASE ORDERS Number: 550064732 Effective Date: 12/18/2004 Term: 12/31/2005 |
| 1549418 - 10181700 MICROSEMI CORP 2529 COMMERCE DR STE E KOKOMO IN 46902 | Type of Contract: PURCHASE CONTRACTS/ PURCHASE ORDERS Number: 550077380 Effective Date: 01/01/2005 Term: 12/31/2005 |
| 1554934 - 10086302 MICROSOFT (OLE62067) Attn PATTY DILGER 1 MICROSOFT WAY REDMOND WA 98052-8300 | Type of Contract: IT SERVICES Number: MSFTSPEA002 Effective Date: 09/01/2003 Term: 8/31/2006 |
| 1233006 - 10134163 MICROSTAR LABORATORIES INC 2265 116TH AVE NE BELLEVUE WA 980043039 | Type of Contract: PURCHASE CONTRACTS/ PURCHASE ORDERS Number: 450163937 Effective Date: 10/03/2005 Term: 12/31/2006 |
| 1233008 - 10122557 MICROSYS TECHNOLOGIES INC 3710 NASHUA DR UNIT 1 MISSISSAUGA ON L4V 1M5 CANADA | Type of Contract: PURCHASE CONTRACTS/ PURCHASE ORDERS Number: 450127968 Effective Date: 08/06/2005 Term: 12/31/2005 |
| 1233023 - 10114312 MICROWAY SYSTEMS INC 7000 N LAWNDALE AVE LINCOLNWOOD IL 60712 | Type of Contract: PURCHASE CONTRACTS/ PURCHASE ORDERS Number: 450093561 Effective Date: 02/24/2005 |
| 1233027 - 10175439 MID AMERICA PLASTICS 4221 JAMES P COLE BLVD FLINT MI 48505 | Type of Contract: PURCHASE CONTRACTS/ PURCHASE ORDERS Number: 550061084 Effective Date: 10/15/2004 Term: 1/1/2007 |
| 1233030 - 10185820 MID AMERICA SEAL & GASKET INC 4221 JAMES P COLE BLVD FLINT MI 48505 | Type of Contract: PURCHASE CONTRACTS/ PURCHASE ORDERS Number: P4360064 Effective Date: 01/01/2005 Term: 12/31/2005 |
| 1233030 - 10185821 MID AMERICA SEAL & GASKET INC 4221 JAMES P COLE BLVD FLINT MI 48505 | Type of Contract: PURCHASE CONTRACTS/ PURCHASE ORDERS Number: P4360065 Effective Date: 01/01/2005 Term: 12/31/2005 |

From: Volpp, Mark [mailto:mark.volpp@delphi.com]
Sent: Monday, February 13, 2006 2:54 PM
To: Steven Sokol; Fred Cook
Cc: Raffoul, Raphael
Subject:

Steve and Fred,

Here is the information on the 4 open invoices we currently have. Sorry for the delay, I've reviewed my analysis internally with my managers and also with a consulting firm that has been assisting Delphi in Chapter 11 issues.

Raphael Raffoul is the Finance Contact to replace Karen Carlson's name with. Raphael will be processing the invoices with the Pre/Position split outlined below.

Invoices 1 and 2 (Office and Plant Floor True-Up):

We are in our Year 2 True-Up (Additional licenses deployed from 09/01/04 – 08/31/05). The start date is 3/1/05 because the Year 2 pricing is based ½ year of Software Assurance plus 1 year 9/1/05 through 8/31/06 (when the EA expires) for a total of 18 months.

Invoices 3 and 4 (Annual payments for EA-Office and Plant floor):

This is the annual payment for year 3 of the EA for Software Assurance. (9/1/05 through 8/31/06).

| 1) Office PC True-up | | | |
|-----------------------------|-----------------------|-----------------------|-----------------------|
| | Pre-Petition | Post-Petition | Total |
| Start Date | 3/1/2005 | 10/8/2005 | 3/1/2005 |
| End Date | 10/7/2005 | 8/31/2006 | 8/31/2006 |
| Number of Days | 221 | 328 | 549 |
| Core CAL | \$614,333.79 | \$911,771.41 | \$1,526,105.20 |
| Office | \$1,252,362.08 | \$1,858,709.32 | \$3,111,071.40 |
| XP | \$444,681.16 | \$659,979.28 | \$1,104,660.44 |
| Total | \$2,311,377.02 | \$3,430,460.02 | \$5,741,837.04 |

| 2) Plant Floor True-up | | | |
|-------------------------------|---------------------|----------------------|--------------|
| | Pre-Petition | Post-Petition | Total |
| Start Date | 3/1/2005 | 10/8/2005 | 3/1/2005 |
| End Date | 10/7/2005 | 8/31/2006 | 8/31/2006 |
| Number of Days | 221 | 328 | 549 |
| Percentage | 40.26% | 59.74% | 100.00% |
| Server CAL | \$57,286.68 | \$85,022.76 | \$142,309.44 |
| XP | \$278,520.87 | \$413,370.53 | \$691,891.20 |

| | | | |
|-------|--------------|--------------|--------------|
| Total | \$335,807.54 | \$498,393.10 | \$834,200.64 |
|-------|--------------|--------------|--------------|

3) EA Annual Payment (Office PC's)

| | Pre-Petition | Post-Petition | Total |
|-------------------------|---------------------|-----------------------|-----------------------|
| Start Date | 9/1/2005 | 10/8/2005 | 9/1/2005 |
| End Date | 10/7/2005 | 8/31/2006 | 8/31/2006 |
| Number of Days | 37 | 328 | 365 |
| Percentage | 10.14% | 39.36% | 100.00% |
| Payment 1 (01/31/06) | \$337,780.20 | \$2,994,375.80 | \$3,332,156.00 |
| Payment 1 (05/31/06) | \$337,780.20 | \$2,994,375.80 | \$3,332,156.00 |
| Total | \$675,560.39 | \$5,988,751.61 | \$6,664,312.00 |

4) EA Annual Payment (Plant Floor)

| | Pre-Petition | Post-Petition | Total |
|---------------------------|--------------------|---------------------|---------------------|
| Start Date | 9/1/2005 | 10/8/2005 | 9/1/2005 |
| End Date | 10/7/2005 | 8/31/2006 | 8/31/2006 |
| Number of Days | 37 | 328 | 365 |
| Percentage | 10.14% | 39.36% | 100.00% |
| Payment (01/31/06) | \$20,472.66 | \$181,487.34 | \$201,960.00 |

| | | | |
|-------|----------------|-----------------|-----------------|
| Total | \$3,343,217.62 | \$10,099,092.06 | \$13,442,309.68 |
|-------|----------------|-----------------|-----------------|